

1 **BEFORE THE CANNABIS COMPLIANCE BOARD**
2 **STATE OF NEVADA**

3
4 STATE OF NEVADA, CANNABIS
COMPLIANCE BOARD,

Case No. 2020-05

5 Petitioner,

6 vs.

7 HERBAL CARE, LLC,

8 Respondent.
9

10
11 **STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION**

12 The Cannabis Compliance Board (the "CCB"), by and through its counsel, Aaron D.
13 Ford, Attorney General for the State of Nevada, L. Kristopher Rath, Esq., Senior Deputy
14 Attorney General and Ashley A. Balducci, Esq., Senior Deputy Attorney General, hereby
15 enters into this Stipulation and Order for Settlement of Disciplinary Action ("Stipulation
16 and Order") with Respondent Herbal Care, LLC ("Herbal Care"), by and through its counsel
17 of record, L. Edward Humphrey, Esq., and Joseph Gilbert, Esq. Pursuant to this
18 Stipulation and Order, Herbal Care and CCB (collectively, the "Parties") hereby stipulate
19 and agree that CCB Case No. 2020-05 (the "Administrative Action") shall be fully and
20 finally settled and resolved upon the terms and conditions set out herein. The Parties
21 further stipulate and agree that, upon approval of this Stipulation and Order by the CCB,
22 the Parties stipulate and agree that the case of *Herbal Care, LLC vs. State of Nevada,*
23 *Department of Taxation*, Case No. CV20-00343 (the "District Court Action"), which Herbal
24 Care filed in the Second Judicial District Court of the State of Nevada, in and for Washoe
25 County, shall also be dismissed, with prejudice, each side to bear its own attorneys' fees
26 and costs.

27 **PERTINENT REGULATORY BACKGROUND AND PROCEDURAL HISTORY**

28 1. Prior to July 1, 2020, the State of Nevada, Department of Taxation, Marijuana

1 Enforcement Division (the “Department”) was the entity enforcing Nevada’s laws and
2 regulations for the marijuana/cannabis industry.

3 2. The Department issued the following marijuana licenses and certificates to
4 Herbal Care in 2017, collectively hereinafter (“Herbal Care License/Certificate”):

<u>ID</u>	<u>License/Certificate</u>
C105	17834269360447362771 Medical Cultivation
RC105	30040918290309210151 Recreational Cultivation

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6
7
8
9 3. The aforementioned Herbal Care License/Certificate have been renewed
10 through Fiscal Year 2021 and are set to expire on June 30, 2021.

11 4. Laws 2019, c. 595, § 240, eff. July 1, 2020, states, in pertinent part, as follows:

12 1. The administrative regulations adopted by the Department of Taxation
13 pursuant to chapters 453A and 453D of NRS governing the licensing and
14 regulation of marijuana establishments and medical marijuana
15 establishments remain in force and are hereby transferred to become the
16 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
17 On and after July 1, 2020, these regulations must be interpreted in a manner
18 so that all references to the Department of Taxation and its constituent parts
19 are read and interpreted as being references to the Cannabis Compliance
20 Board and its constituent parts, regardless of whether those references have
21 been conformed pursuant to section 244 of this act at the time of
22 interpretation...

23 3. Any action taken by the Department of Taxation or its constituent parts
24 pursuant to chapter 453A and 453D of NRS governing the licensing and
25 regulation of marijuana establishments and medical marijuana
26 establishments before July 1, 2020, remains in effect as if taken by the
27 Cannabis Compliance Board or its constituent parts on and after July 1, 2020.

28 5. Effective July 1, 2020 and pursuant to NRS 678A.350, the CCB superseded
the Department in enforcing Nevada’s laws and regulations for the cannabis industry.

6. The Administrative Action was originally filed on May 13, 2020, as a
complaint before the Chief Administrative Law Judge, Department of Taxation, State of
Nevada, Case No. 2020-05. As set forth in Paragraphs 4 and 5, above, as of July 1, 2020,
jurisdiction of the Administrative Action transferred from the Department to CCB. On July

1 21, 2020, the CCB filed a disciplinary complaint against Herbal Care, CCB Case No. 2020-
2 05 (the "CCB Complaint"), which supersedes the disciplinary complaint filed by the
3 Department. A copy of that CCB Complaint is attached to this Stipulation and Order as
4 Exhibit 1 and contains the factual and legal allegations against Herbal Care, as asserted
5 by the CCB.¹ The Parties stipulated to stay the Administrative Action, approved by the
6 CCB, to pursue settlement negotiations.

7 7. With respect to the District Court Action, on February 21, 2020, Herbal Care
8 filed a Petition for Writ of Mandamus in the Second Judicial District Court, alleging, *inter*
9 *alia*, that Herbal Care's agreement to an indefinite suspension was improper and indicated
10 a desire to move forward with the administrative process. On April 20, 2020, Herbal Care
11 filed an Amended Petition for Writ of Mandamus and Complaint. The Department
12 responded with a motion for dismissal, filed on May 14, 2020. The Parties then stipulated
13 to stay the District Court Action to pursue settlement negotiations.

14 ACKNOWLEDGEMENTS AND APPLICABLE LAW

15 This Stipulation and Order is made and based upon the following acknowledgements
16 by the Parties:

17 8. Herbal Care has entered into this Stipulation and Order on its own behalf and
18 with full authority to resolve the claims against it, and is aware of Herbal Care's rights to
19 contest the violations pending against it. These rights include representation by an
20 attorney at Herbal Care's own expense, the right to a hearing on any violations or
21 allegations formally filed, the right to confront and cross-examine witnesses called to testify
22 against Herbal Care, the right to present evidence on Herbal Care's own behalf, the right
23 to testify on Herbal Care's behalf, the right to obtain any other type of formal judicial review
24 of this matter, and any other rights which may be accorded to Herbal Care pursuant to the
25 provisions of NRS Chapters 678A through 678D, NAC Chapters 453A and 453D, and any
26 other provisions of Nevada law. Herbal Care waives all these rights by entering into this
27 Stipulation and Order.

28 ¹ The definition of "Administrative Action" shall include this complaint and the proceedings before the Department of Taxation, Marijuana Enforcement Division, prior to July 1, 2020.

1 9. Should this Stipulation and Order be rejected by the CCB or not timely
2 performed by Herbal Care, it is agreed that presentation to and consideration by the CCB
3 of such proposed stipulation or other documents or matters pertaining to the consideration
4 of this Stipulation and Order shall not unfairly or illegally prejudice the CCB or any of its
5 members from further participation, consideration, adjudication, or resolution of these
6 proceedings and that no CCB member shall be disqualified or challenged for bias.

7 10. Herbal Care acknowledges that this Stipulation and Order shall only become
8 effective upon approval by the CCB.

9 11. Herbal Care enters into this Stipulation and Order after being fully advised
10 of Herbal Care's rights and as to the consequences of this Stipulation and Order. This
11 Stipulation and Order embodies the entire agreement reached between the CCB and
12 Herbal Care. It may not be altered, amended, or modified without the express written
13 consent of the Parties and all alterations, amendments and/or modifications must be in
14 writing.

15 12. In an effort to avoid the cost and uncertainty of a hearing, the Parties have
16 agreed to settle this matter. In settling this matter, Herbal Care acknowledges that the
17 facts contained in the paragraphs in the above "Pertinent Regulatory Background and
18 Procedural History" portion of this Stipulation and Order are true and correct. Without
19 waiving any constitutional rights against self-incrimination, Herbal Care further
20 acknowledges that certain facts contained in the CCB Complaint in Case No. 2020-05 could
21 be found to constitute violations of Title 56 of NRS (NRS Chapters 678A through 678D),
22 NRS Chapters 453A and 453D and NAC Chapters 453A and 453D, with penalties up to
23 and including revocation of the Herbal Care License/Certificate if this matter went to an
24 administrative hearing.

25 13. In settling this matter the Executive Director for CCB and counsel for CCB
26 have considered the factors set forth in NCCR 4.030(2), including: the gravity of the
27 violations; the economic benefit, or savings, if any, resulting from the violations; the size of
28 the business of the violator; the history of compliance with the Regulations of the Nevada

1 Cannabis Compliance Board (“NCCR”) and Title 56 of NRS by the violator; actions taken to
2 remedy and/or correct the violations; and the effect of the penalty on the ability of violator
3 to continue business, and other matters that justice requires under the circumstances.

4 14. To fully resolve the allegations in the CCB Complaint filed July 21, 2020, the
5 Administrative Action, and the District Court Action, and for these purposes and no other,
6 Herbal Care specifically admits to the following violations with respect to the CCB
7 Complaint:

- 8 a. As to licenses C105 and RC105, one Category I violation under NAC
9 453D.905(a)(2) (operating without all required permits, certificates and
10 licenses) based on the expiration/lapse of Herbal Care’s City of Reno business
11 license.²
- 12 b. As to licenses C105 and RC105, one Category II violation under NAC
13 453D.905(3)(b)(2) (failing to promptly admit regulatory personnel into its
14 premises) based on vicarious liability because Melissa Robertson did not
15 immediately admit Department staff into the Herbal Care facility on
16 September 5, 2018.³
- 17 c. As to licenses C105 and RC105, one Category II violation under NAC
18 453D.905(b)(10) (purchasing marijuana/cannabis from an unapproved source)
19 based on vicarious liability because Herbal Care agent, consultant, and/or
20 employee Vince Austin admitted that he personally brought marijuana seeds
21 from an unapproved source into the State of Nevada and used those seeds in
22 creating the strains he grew at Herbal Care; which could further subject
23 Herbal Care to revocation of registration certificate C105 under NRS
24 453A.340(2).⁴
- 25 d. As to licenses C105 and RC105, two Category III violations under NAC
26 453D.905(3)(d)(4) for violation of seed-to-sale tracking requirements.⁵
- 27 e. As to licenses C105 and RC105, one Category III violation under NAC
28 453D.905(3)(d)(8) based on the expiration of Melissa Robertson’s agent card.⁶
- f. As to licenses C105 and RC105, two Category V violations under NAC
453.446(1)(a)(2) and NAC 453D.905(3)(f)(6) because toilet paper and paper

² See CCB Complaint at ¶ 57 for CCB allegations.

³ See CCB Complaint at ¶ 40 for CCB allegations.

⁴ See CCB Complaint at ¶ 41 for CCB allegations.

⁵ See CCB Complaint at ¶¶ 43 and 44 for CCB allegations.

⁶ See CCB Complaint at ¶ 42 for CCB allegations.

1 towels were not stocked in Herbal Care's restroom.⁷

2 g. As to licenses C105 and RC105, one Category V violation under NAC
3 453D.905(3)(f)(6) for failing to have an employee on staff who is a certified
4 pest control applicator as required under NAC 453D.740(4).⁸

5 h. As to licenses C105 and RC105, one Category V violation under NAC
6 453D.905(f)(6) for utilizing a ventilation system that does not comply with
7 NAC 453D.708(1)(a).⁹

8 i. As to licenses C105 and RC105, three Category V violations under NAC
9 453D.905(3)(f)(6) for failing to properly maintain the Herbal Care facility
10 under NAC 453D.734 and NAC 453D.732(1)(c), 2(c), 2(d), and (e)(10).¹⁰

11 15. As to the remaining alleged violations contained in the CCB Complaint,
12 Herbal Care neither admits to, nor denies, said alleged violations.

13 16. Herbal Care agrees to pay a civil penalty and costs in the total amount of One
14 Hundred and Twenty-five Thousand Dollars (\$125,000.00) (the "Settlement Amount") in
15 consideration of the CCB's agreement to fully resolve the Administrative Action and
16 District Court Action and all fines, penalties, and costs asserted therein and/or associated
17 therewith, on the terms set forth herein.

18 17. If the CCB approves this Stipulation and Order, it shall be deemed and
19 considered disciplinary action by the Board against Herbal Care.

20 18. Both Parties acknowledge that the CCB has jurisdiction to consider and order
21 this Stipulation and Order because Herbal Care holds privileged licenses/certificates
22 regulated by the CCB as of July 1, 2020. Herbal Care expressly, knowingly, and
23 intentionally waives the 21-day and/or 5-day notice requirements contained in the Nevada
24 Open Meeting Law and acknowledges that this Stipulation and Order may be presented to
25 the CCB for its consideration and potential ratification at the Board's meeting on January
26 26, 2021.

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⁷ See CCB Complaint at ¶ 52 for CCB allegations.

⁸ See CCB Complaint at ¶ 55 for CCB allegations.

⁹ See CCB Complaint at ¶ 56 for CCB allegations.

¹⁰ See CCB Complaint at ¶ 51 for CCB allegations.

1 **STIPULATED ADJUDICATION**

2 Based upon the above acknowledgments of the Parties and their mutual agreement,
3 the Parties stipulate and agree that the following terms of discipline shall be imposed by
4 the CCB in this matter:

5 19. **Suspension of the Herbal Care License/Certificate.** The summary suspension
6 of the Herbal Care License/Certificate that became effective on September 7, 2018, shall
7 remain in full force and effect until 1 business day after Herbal Care has completed the
8 sale and transfer of its certificate and license as set forth in this agreement and the new
9 owner or owners of Herbal Care have been approved by CCB to resume cannabis
10 establishment operations. Until that time, Herbal Care may take actions in preparation for
11 the Herbal Care Transfer (defined below) in accord with Nevada law, but shall not conduct
12 any operations involving “cannabis”, “usable cannabis”, “THC”, “cannabis product” or
13 “CBD” as those terms is defined in: (1) NRS 678A.085’s incorporation of NRS 453.096; (2)
14 NRS 678C.100; (3) NRS 678A.240 and 453.139; (4) NCCR 1.070; (5) NRS 678A.120; and/or
15 (6) NCCR 1.240; and shall further not conduct any operations involving “hemp” as that
16 term is defined in NRS 557.160. In addition, until the Herbal Care Transfer has been
17 completed and approved by the CCB, Herbal Care shall not have on its premises any
18 “cannabis”, “usable cannabis”, “THC”, “CBD”, “hemp”, and/or “cannabis product”.
19 Furthermore, should Herbal Care wish to undertake any modifications to its facility prior
20 to, or after, the Herbal Care Transfer, Herbal Care must obtain CCB approval of any such
21 modifications pursuant to NCCR 4.050(1)(a)(11), 6.060(6), and 8.020(3).

22 20. **Surrender and Revocation of Agent Card.** On or about January 23, 2019, the
23 marijuana establishment agent card of Herbal Care’s primary owner, Keith Johnson,
24 expired during the pendency of the Parties’ disputes. In settlement of the Parties’ disputes
25 as set forth in this Stipulation and Order, the CCB deems Keith Johnson’s agent card
26 surrendered and revoked as of January 23, 2019. Pursuant to this Stipulation and Order
27 and NCCR 4.030(1)(b) and 4.100, Keith Johnson agrees that he shall not re-apply for an
28 establishment agent card prior to January 24, 2027.

1 21. Payment of Civil Penalties. Herbal Care shall pay the Settlement Amount of
2 One Hundred Twenty-Five Thousand Dollars (\$125,000.00) no later than the earlier of: (1)
3 ninety (90) calendar days from the date the CCB approval this Stipulation and Order; (2)
4 fourteen (14) calendar days from the date of the CCB Final Approval of the Herbal Care
5 Transfer.

6 22. Sale/Transfer of Herbal Care License/Certificate. The current owners of
7 Herbal Care shall use their best efforts to sell all their interests in Herbal Care certificate
8 C105 and license RC105 no later than December 31, 2021 (the "Herbal Care Transfer").
9 "Best efforts" as used herein shall mean the owners of Herbal Care diligently pursuing the
10 Herbal Care Transfer. It is understood that factors outside the owners' control may cause
11 the Herbal Care Transfer to be delayed beyond the deadline set forth in this Section, such
12 as obtaining the necessary the CCB's approval (the "CCB Final Approval")¹¹ of a new owner
13 or owners, and environmental conditions, including, but not limited to, Covid-19. Best
14 efforts will be deemed to have been made if by no later July 31, 2021, the current owners
15 of Herbal Care have retained an independent and qualified third-party broker to market
16 and consummate the Herbal Care Transfer, so long as the sale is completed by December
17 31, 2021.

18 So long as the current owners use their best efforts to complete the Herbal Care
19 Transfer's contemplated sale, any failure to sell the interest by the December 31, 2021
20 deadline set forth above shall not be considered an event of default under this Stipulation
21 and Order and no additional penalties will be imposed. The CCB may inquire as to the
22 current owners' efforts to comply with this Paragraph and the current owners and counsel
23 for Herbal Care agree to provide any documentation and status reports necessary to
24 support the current owners' contention that they are using their best efforts to sell the
25 Herbal Care License/Certificate and complete the Herbal Care Transfer. Herbal Care shall
26 ensure that any prospective purchasers provide CCB with any information and/or

27 _____
28 ¹¹ Herbal Care must submit a Transfer of Interest form approved by CCB for approval of the sale to the CCB
for approval before any sale can be completed. CCB staff will carry out the required investigation of the new
proposed owners.

1 documents required to adequately process the transfer of interest request. Herbal Care
2 shall advise any prospective purchasers in writing of the discipline imposed via this
3 Stipulation and Order. Herbal Care shall promptly notify CCB of any offer to purchase the
4 Herbal Care License/Certificate conditionally accepted by Herbal Care and/or its owners.
5 Any current or prior owners of Herbal Care are barred from holding any ownership
6 interests in Herbal Care until the later of January 24, 2027, or 6 years from the date the
7 CCB approves this Stipulation and Order. Any subsequent transfers of interest must still
8 be approved by CCB, pursuant to NCCR.

9 If the contemplated Herbal Care Transfer cannot occur within the December 31,
10 2021 deadline despite the owner's best efforts to do so, the owners shall provide at least 30
11 calendar days advanced notice to the CCB in writing and the Parties agree to work together
12 in good-faith to agree on a reasonable extension.

13 23. Potential Future Action Against Herbal Care. The Parties agree that,
14 pursuant to the specific facts of this case and the resolution reached in this Stipulation and
15 Order, the progressive disciplinary provisions of NAC 453D.905(4)(a)-(f) of two years shall
16 apply. Any additional violations within said two-year period would invoke the progressive
17 disciplinary provisions of NAC 453D.905(4)(a)-(f).

18 Notwithstanding the above, the Parties reserve all rights with respect to the
19 commencement date that said two years commences under the relevant statutes and
20 regulations. The CCB contends that said two-year period commences as of the date the
21 CCB approves this Stipulation and Order. Herbal Care contends that said two-year period
22 commences as of the date of the alleged violations, i.e. on September 5, 2018. The Parties
23 agree that each of the Parties reserves all rights as to resolution of this issue, which may
24 be determined if and when there is disciplinary action within the disputed time frame(s). If
25 there is no disciplinary action against Herbal Care within two years after the CCB approves
26 this Stipulation and Order, the Parties agree this issue shall be moot. If there is such
27 disciplinary action within two years after the CCB approves this Stipulation and Order,
28 Herbal Care reserves its rights to raise its contention that the two-year progressive

1 disciplinary time period ended on September 5, 2020, in any such later action. Regardless,
2 after said two-year period expires, the CCB may still consider any relevant factors,
3 including the compliance history of Herbal Care, that are permissible under law. In any
4 future disciplinary action involving the Herbal Care License/Certificate, CCB will also take
5 into account and consider the fact that Herbal Care has cooperated in and negotiated in
6 good faith in the resolution of the Administrative Action and the District Court Action and
7 that Herbal Care will have new owners that were not involved in the violations alleged in
8 the Administrative Action and at issue in the District Court Action.

9 24. Payment of Taxes, Late Payment Penalties and Interest. Herbal Care shall
10 pay all unpaid taxes, late payment penalties, and interest owed (if any) based on the
11 returns submitted/filed by Herbal Care. In this, the Parties acknowledge that on October
12 7, 2020, the Department issued a Letter of Good Standing for Herbal Care (Taxpayer
13 identification number [REDACTED]) stating Herbal Care "is currently in good standing with
14 the Nevada Department of Taxation. All licenses, permits and taxes are in compliance with
15 the Nevada Department of Taxation and it is not currently subject to an audit."

16 25. License and Certificate. The CCB acknowledges that Herbal Care shall
17 continue to be the licensee of certificate C105 and license RC105 with all rights, powers
18 and privileges associated with the said certificate and license (except as limited by
19 Paragraph 19 above) until they are transferred to a third-party pursuant to the Herbal
20 Care Transfer. To continue to enjoy said rights, Herbal Care must validly renew the license
21 and certificate prior to expiration. CCB acknowledges that the current owners of Herbal
22 Care do not have cannabis agent registration cards and will not require them to hold
23 cannabis registration cards, provided they comply with the restrictions set forth in
24 Paragraph 19, above. However, the new owners must hold valid cannabis agent
25 registration cards pursuant to NRS Chapters 678A through 678D and any other applicable
26 regulations (including, for example, the NCCR) before initiating cannabis establishment
27 operations.

28 26. Contingency if Approval Denied. If approval of this Stipulation and Order is

1 denied by CCB, Herbal Care and counsel for the CCB agree to resume settlement
2 negotiations in good faith and attempt to reach an agreement to amend this Stipulation
3 and Order and resubmit an amended Stipulation and Order to the CCB to review for
4 approval at its next regularly scheduled meeting. If such an agreement cannot be reached,
5 the Parties agree to lift the stay on both the Administrative Action and the District Court
6 Action. Once the stays are lifted for the reasons set forth in this Paragraph, Herbal Care
7 preserves all its claims and arguments in the District Court Action and defenses and
8 arguments in the Administrative Action; CCB and the Department preserve all their claims
9 and arguments in the Administrative Action and defenses and arguments in the District
10 Court Action.

11 27. Contingency if Approval Conditioned. If the CCB approves this Stipulation
12 and Order, but said approval is contingent on certain conditions, the Parties will undertake
13 further good faith negotiations to include said conditions in an amended stipulation and
14 order for execution by the CCB Chair. If Herbal Care does not agree to the certain
15 conditions imposed by the CCB, the Parties will undertake additional negotiations and
16 attempt to reach an agreement to amend this Stipulation and Order and resubmit an
17 amended Stipulation and Order to the CCB to review for approval at its next regularly
18 scheduled meeting. If such an agreement cannot be reached, the Parties agree to lift the
19 stay on both the Administrative Action and the District Court Action. Once the stays are
20 lifted for the reasons set forth in this Paragraph, Herbal Care preserves all its claims and
21 arguments in the District Court Action and defenses and arguments in the Administrative
22 Action; CCB and the Department preserve all their claims and arguments in the
23 Administrative Action and defenses and arguments in the District Court Action.

24 28. Closure of Disciplinary Action. Once this Stipulation and Order is fully
25 performed by Herbal Care, the Administrative Action will be closed. During the course of
26 performance, no discipline shall be imposed against Herbal Care for any events occurring
27 prior to execution of this Stipulation and Order beyond the terms stated herein.

28 29. Dismissal of District Court Action. The Parties will confer and draft a

1 mutually agreeable stipulation to dismiss the District Court Action. Within 14 calendar
2 days of the CCB's acceptance of this Stipulation and Order, Herbal Care agrees that it will
3 file with the Second Judicial Court a Stipulation and Order to dismiss the District Court
4 Action, Case No. CV20-00343, with prejudice, with each side to bear its own attorneys' fees
5 and costs.

6 30. Communications with CCB Members. Herbal Care understands that this
7 Stipulation and Order will be presented to the CCB in open session at a duly noticed and
8 scheduled CCB meeting. Herbal Care understands that the CCB has the right to decide in
9 its own discretion whether or not to approve this Stipulation and Order. The CCB's counsel,
10 which is the Nevada Attorney General and its staff attorneys, will recommend approval of
11 this Stipulation and Order. In the course of seeking CCB acceptance of this Stipulation and
12 Order, counsel for CCB may communicate directly with individual CCB members one at a
13 time. Herbal Care acknowledges that such communications may be made or conducted *ex*
14 *parte*, without notice or opportunity for Herbal Care to be heard on its part until the public
15 CCB meeting where this Stipulation and Order is discussed, and that such contacts and
16 communications may include, but may not be limited to, matters concerning this
17 Stipulation and Order, the Administrative Action and the District Court Action and any
18 and all information of every nature whatsoever related to these matters. Herbal Care
19 agrees that it has no objections to such *ex parte* communications. CCB agrees that Herbal
20 Care and/or its counsel may appear at the CCB meeting where this Stipulation and Order
21 is discussed and, if requested, respond to any questions that may be addressed to Herbal
22 Care and/or the Attorney General's staff attorneys. Herbal Care agrees that, should the
23 CCB decline to approve this Stipulation and Order, Herbal Care will not contest or
24 otherwise object to any CCB member hearing and adjudicating the Administrative Action
25 based on the aforementioned *ex parte* communications with anyone from the Nevada
26 Attorney General's Office.

27 31. Mutual Releases. Upon approval of this Stipulation and Order by the CCB,
28 the following full and complete mutual releases shall become immediately, mutually, and

1 bilaterally effective to the broadest extent possible:

2 a. Herbal Care Release of CCB and Nevada Department of Taxation. Herbal
3 Care, on behalf of and for its current and prior directors, officers, members, managers,
4 managing members, partners, principals, employees, current and former agents, current
5 and former attorneys, trustees, trusts, settlors, accountants, advisors, consultants,
6 insurers, reinsurers, predecessors, successors, affiliates, subsidiaries, related entities,
7 successors, direct or indirect owners, assigns, heirs, and anyone else over whom they
8 exercise influence, and/or control, hereby releases, now and forever, the Department
9 (inclusive of the Department's Marijuana Enforcement Division), the CCB, and all of their
10 current and former agents, attorneys, accountants, advisors, consultants, insurers,
11 reinsurers, predecessors, successors, related entities, successors, direct or indirect owners,
12 assigns, from any and all manner of claims, actions, causes of action, charges, suits, rights,
13 debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants,
14 contracts, controversies, agreements, promises, variances, trespasses, damages,
15 judgments, executions, obligations, liabilities, and demands of any kind or nature, whether
16 arising at law or in equity, whether liquidated or unliquidated, whether accrued or to
17 accrue hereafter, whether absolute or contingent, whether foreseen or unforeseen, and
18 whether or not heretofore asserted (collectively, the "Claims and Losses"), including
19 without limitation any claim, obligation, or damages that is directly or indirectly related to
20 any facts, conduct, or violations that have been alleged or could have been alleged, as of the
21 Effective Date of this Stipulation and Order, in the Administrative Action (inclusive of the
22 disciplinary complaint filed by the Department of Taxation against Herbal Care and CCB
23 Case No. 2020-05), the District Court Action, and/or any litigation arising out of the
24 foregoing, from the beginning of time through and beyond the end of time (collectively, the
25 "Herbal Care Release"). The Herbal Care Release may be pleaded as a full and complete
26 defense to and may be used as the basis for an injunction prohibiting any action, suit, or
27 other proceeding at law or in equity which may be instituted, prosecuted, threatened,
28 initiated, or attempted in breach of the Herbal Care Release set forth herein.

1 b. CCB and the Department's Release of Herbal Care: CCB and the Department,
2 on behalf of and for its directors, officers, members, managers, managing members,
3 partners, principals, employees, current and former agents, staff, current and former
4 attorneys, trustees, trusts, settlors, accountants, advisors, consultants, insurers,
5 reinsurers, predecessors, successors, affiliates, subsidiaries, related entities, successors,
6 direct or indirect owners, assigns, heirs, and anyone else over whom they exercise influence,
7 and/or control, hereby release, now and forever, Herbal Care, and all of its current and
8 former agents, attorneys, accountants, advisors, consultants, insurers, reinsurers,
9 predecessors, successors, related entities, successors, direct or indirect owners, assigns,
10 from any and all manner of claims, actions, causes of action, charges, suits, rights, debts,
11 dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts,
12 controversies, agreements, promises, variances, trespasses, damages, judgments,
13 executions, obligations, liabilities, and demands of any kind or nature, whether arising at
14 law or in equity, whether liquidated or unliquidated, whether accrued or to accrue
15 hereafter, whether absolute or contingent, whether foreseen or unforeseen, and whether or
16 not heretofore asserted (collectively, the "Claims and Losses"), including without limitation
17 any claim, obligation, or damages that is directly or indirectly related to any facts, conduct,
18 or violations that have been alleged or could have been alleged, as of the Effective Date of
19 this Stipulation and Order, in the Administrative Action (inclusive of the disciplinary
20 complaint filed by the Department of Taxation against Herbal Care and CCB Case No.
21 2020-05), the District Court Action, and/or any litigation arising out of the foregoing, from
22 the beginning of time through and beyond the end of time (collectively, the "CCB Release").
23 The CCB Release may be pleaded as a full and complete defense to and may be used as the
24 basis for an injunction prohibiting any action, suit, or other proceeding at law or in equity
25 which may be instituted, prosecuted, threatened, initiated, or attempted in breach of the
26 CCB Release set forth herein.

27 32. Releases Valid Even if Additional or Different Facts. The Parties each and
28 all, in signing this Stipulation and Order, expressly acknowledge that they each may, or in

1 the collective may, discover facts which are additional to or different from those which the
2 Parties now know or believe to be true. It is the Parties' intent that the Releases set forth
3 in Paragraph 31 above shall remain fully enforceable notwithstanding the discovery of any
4 additional or different facts by any of the Parties.

5 33. No Precedence. The Parties agree that this Stipulation and Order shall not
6 constitute a precedent for any other issues or proceedings before the CCB or District Court,
7 other than those set forth in this Stipulation and Order. Furthermore, this Stipulation and
8 Order shall not be admissible in any other proceeding or action with respect to any other
9 matter and/or any other licensee, except proceedings brought to enforce this Stipulation
10 and Order under its terms and/or for the CCB's consideration of future disciplinary action
11 against Herbal Care, including progressive discipline pursuant to NAC 453D.905¹², and/or
12 NCCR 4.035 through 4.060. As every case concerns different facts and details, this
13 Stipulation does not act as precedence to bind CCB to impose any particular penalty, to
14 charge or allege any particular violation, and/or to impose any particular disciplinary
15 action in any future action against Herbal Care that is not resolved herein, or any other
16 respondent, for violations of the same statutes and/or regulations addressed in this
17 Stipulation and Order. Likewise, CCB is not bound by any previous settlement agreements
18 in entering into this Stipulation and Order.

19 34. Attorneys' Fees and Costs. Except as set encompassed in the Settlement
20 Amount and contemplated in Paragraph 41 below, the Parties each agree to bear their own
21 attorneys' fees and costs.

22 35. Further Assurances. The Parties shall cooperate in executing such additional
23 documents and performing such further acts as may be reasonably necessary to give effect
24 to the purposes and provisions of this Stipulation and Order.

25 36. Voluntary and Informed Agreement. The Parties, and each of them, to this
26 Stipulation and Order, represent that each has read completely and understands fully the
27 terms of this Stipulation and Order, that such terms are fully understood and voluntarily
28

¹² Subject to the limitations and provisions set forth in Paragraph 23, above.

1 accepted by each of the Parties in advance of and as memorialized by the signing of this
2 Stipulation and Order, and that the Party's signature to this Stipulation and Order
3 indicates same. The Parties, and each of them, further represent that they have voluntarily
4 entered into this Stipulation and Order to make a full, final, and complete compromise
5 upon the terms and conditions set forth herein. The Parties, and each of them, hereto
6 further represent to each other that any releases, waivers, discharges, covenants, and
7 agreements provided for in this Stipulation and Order have been knowingly and voluntarily
8 granted and without any duress or undue influence of any nature from any person. The
9 Parties, and each of them, hereby expressly acknowledge that they are each represented
10 by counsel of their own choice in this matter and have been advised by counsel accordingly.

11 37. Warranties of Authority. The Parties to this Stipulation and Order, and each
12 of them, expressly warrant and represent to all other Parties that each has the full right,
13 title, and authority to enter into and to carry out its obligations hereunder, with the sole
14 exception of the required approval of this Stipulation and Order by the CCB. The Parties
15 also expressly acknowledge the foregoing authority.

16 38. Binding Effect. This Stipulation and Order shall be binding upon and inure to
17 the benefit of the Parties hereto and the Parties' respective successors, predecessors,
18 parents, affiliates, shareholders, employees, heirs, executors, assigns, and administrators.

19 39. Construction. The headings of all Sections and Paragraphs of this Stipulation
20 and Order are inserted solely for the convenience of reference and are not a part of the
21 Stipulation and Order and are not intended to govern, limit, or aid in the construction or
22 interpretation of any term or provision of this Stipulation and Order. In the event of a
23 conflict between such caption and the paragraph at the head of which it appears, the
24 paragraph and not such caption shall govern in the construction of this Stipulation and
25 Order.

26 40. Governing Law. This Stipulation and Order shall be governed by and
27 construed in accordance with the laws of the State of Nevada, without reference to conflict
28 of law principles.

1 41. Jurisdiction and Forum Selection. The Parties consent to the jurisdiction of
2 the Eighth Judicial District Court of the State of Nevada, in and for Clark County, to
3 resolve any disputes related to the terms or enforcement of this Stipulation and Order. The
4 successful or prevailing Party or Parties in such action shall be entitled to recover
5 reasonable attorney fees, costs, and expenses actually incurred in initiating or responding
6 to such proceeding, in addition to any other relief to which it may be entitled.


7 42. Interpretation. This Stipulation and Order is the result of negotiations among
8 the Parties who have each negotiated and reviewed its terms. In the event a Court ever
9 construes this Stipulation and Order, the Parties expressly agree, consent, and assent that
10 such Court shall not construe this Stipulation and Order or any provision hereof against
11 any Party as its drafter for purposes of interpreting any ambiguity or uncertainty in this
12 Stipulation and Order.


13 43. Time is of the Essence. Time is of the essence in the performance of all terms
14 of this Stipulation and Order.

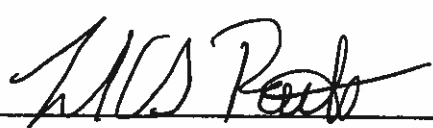
15 44. Severability. If any portion of this Stipulation and Order, or its application
16 thereof to any person or circumstance, shall be deemed to any extent to be invalid, illegal,
17 or unenforceable as a matter of law, all remaining clauses of this Stipulation and Order
18 and its application thereof shall be not affected and shall remain enforceable to the fullest
19 extent permitted by law.


20 45. Counterparts and Copies. This Stipulation and Order may be executed in
21 counterparts, each of which when so executed and upon delivery to counsel of record for the
22 remaining Parties shall be deemed an original ("Counterparts"). This Stipulation and
23 Order shall be deemed executed when Counterparts of this Stipulation and Order have
24 been executed by all the Parties; such Counterparts taken together shall be deemed to be
25 the Agreement. This Stipulation and Order may be executed by signatures provided by
26 electronic facsimile or email, which signatures shall be binding and effective as original
27 wet ink signatures hereupon. All fully executed copies of this Stipulation and Order are
28 duplicate originals, equally admissible in evidence.

1 IN WITNESS WHEREOF, this Stipulation and Order has been executed by the
2 Parties and attested by their duly authorized representatives as of the date(s) so indicated.
3 The Effective Date of this Stipulation and Order shall be the date it is ordered by the CCB.
4

5
6  Date: 1/19/2021
7 L. Edward Humphrey (Bar No. 9066),
8 Counsel for Respondent Herbal Care
9

10
11
12  Date: Jan 17, 2021
13 Keith Johnson, (Jan 17, 2021 20:52 EST)
14 On behalf of Respondent Herbal Care
15

16  Date: 1/20/2021
17 L. Kristopher Rath (Bar No. 5749)
18 Senior Deputy Attorney General
19 Counsel for Cannabis Compliance Board
20

21  Date: 1/21/2021
22 Tyler Klimas, Executive Director for the Cannabis
23 Compliance Board
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ORDER

WHEREAS, on the 26th day of January, 2021, the Nevada Cannabis Compliance Board approved and adopted all the terms and conditions set forth in the Stipulation and Order for Settlement of Disciplinary Action with Herbal, LLC.

IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 26th day of January, 2021.

**STATE OF NEVADA,
CANNABIS COMPLIANCE BOARD**


By: 
HON. MICHAEL L. DOUGLAS, CHAIR

EXHIBIT 1

EXHIBIT 1

1 **BEFORE THE CANNABIS COMPLIANCE BOARD**
2 **STATE OF NEVADA**

3
4 **STATE OF NEVADA, CANNABIS**
5 **COMPLIANCE BOARD,**

Case No. 2020-05

6 **Petitioner,**

7 vs.

8 **HERBAL CARE, LLC,**



9 **Respondent.**

10
11 **COMPLAINT FOR DISCIPLINARY ACTION**

12 The Cannabis Compliance Board of the State of Nevada (the "CCB"), by and through
13 counsel, Aaron D. Ford, Attorney General of the State of Nevada, L. Kristopher Rath, Esq.,
14 Senior Deputy Attorney General, and Ashley A. Balducci, Esq., Senior Deputy Attorney
15 General, having a reasonable basis to believe that RESPONDENT HERBAL CARE, LLC
16 ("Herbal Care" or "Respondent") has violated provisions of Chapters 453A and 453D of the
17 Nevada Revised Statutes ("NRS") and Chapters 453A and 453D of the Nevada
18 Administrative Code ("NAC"), hereby issues its Complaint, stating the CCB's charges and
19 allegations as follows:

20 **JURISDICTION AND NOTICE**

21 1. During all relevant times mentioned in this complaint, Respondent Herbal
22 Care held, and currently holds, the following certificates and licenses:

23 ID	License/Certificate	Issued ¹	Address
24 C105	17834269360447362771 Medical Cultivation	07/1/18	
25 RC105	30040918290309210151 Recreational Cultivation	07/01/17	

26
27 and is, therefore, subject to the jurisdiction of the CCB and the provisions of NRS Chapters

28

¹ The Medical certificates were first issued by the Department of Taxation in 2017.

1 453A and 453D and NAC Chapters 453A and 453D.

2 2. During all relevant times mentioned in this complaint, Respondent Herbal
3 Care is registered as a limited-liability company in the State of Nevada. Keith R.E. Johnson
4 is the managing member of Herbal Care.

5 3. During all relevant times mentioned in this complaint, Keith R.E. Johnson
6 was the majority owner of the business, but delegated the management and operations for
7 Herbal Care to others, including Vince Austin and other Herbal Care employees.

8 4. Laws 2019, c. 595, § 240, eff. July 1, 2020, states, in pertinent part, as follows:

9 1. The administrative regulations adopted by the Department of Taxation
10 pursuant to chapters 453A and 453D of NRS governing the licensing and
11 regulation of marijuana establishments and medical marijuana
12 establishments remain in force and are hereby transferred to become the
13 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
14 On and after July 1, 2020, these regulations must be interpreted in a manner
15 so that all references to the Department of Taxation and its constituent parts
16 are read and interpreted as being references to the Cannabis Compliance
17 Board and its constituent parts, regardless of whether those references have
18 been conformed pursuant to section 244 of this act at the time of
19 interpretation...

20 3. Any action taken by the Department of Taxation or its constituent parts
21 pursuant to chapter 453A and 453D of NRS governing the licensing and
22 regulation of marijuana establishments and medical marijuana
23 establishments before July 1, 2020, remains in effect as if taken by the
24 Cannabis Compliance Board or its constituent parts on and after July 1, 2020.

25 5. Effective July 1, 2020 and pursuant to NRS 678A.350, the CCB superseded
26 the Marijuana Enforcement Division of the Department of Taxation (the "Department") in
27 enforcing Nevada's laws and regulations for the cannabis industry.

28 6. This action was originally filed on May 13, 2020, as a complaint before the
Chief Administrative Law Judge, Department of Taxation, State of Nevada. That original
complaint was also served on Respondent and respondent's counsel on May 13, 2020. On
June 10, 2020, Respondent and the Department entered into a 60 day stay of the
administrative matter to pursue settlement negotiations. As set forth in Paragraphs 4 and
5, above, as of July 1, 2020, jurisdiction of this matter transferred from the Department to

1 CCB and this matter must therefore be adjudicated under CCB. Hence, this Complaint is
2 now filed under CCB². The factual allegations and charges remain the same as in the
3 original complaint. This CCB Complaint is filed to conform to the jurisdictional and other
4 requirements under Title 56 of NRS (NRS 678A through 678D).

5 7. As set forth below, the events at issue in this Complaint occurred prior to July
6 1, 2020, when Herbal Care was licensed pursuant to NRS Chapters 453A and 453D and
7 NAC Chapters 453A and 453D. Herbal Care is subject to the jurisdiction of the CCB and
8 subject to discipline pursuant to NRS 678A through 678D and the relevant provisions of
9 NRS Chapters 453A and 453D and NAC 453A and 453D. Violations are referenced herein
10 to the statutes and regulations in effect at the time each said violation occurred.

11 8. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director
12 has transmitted the details of the suspected violations of Herbal Care to the Attorney
13 General and the Attorney General has conducted an investigation of the suspected
14 violations to determine whether they warrant proceedings for disciplinary action. The
15 Attorney General has recommended to the Executive Director that further proceedings are
16 warranted, as set forth in this CCB Complaint. The Executive Director has transmitted
17 this recommendation and information to the CCB. Pursuant to NRS 678A.510(2)(b), the
18 CCB has voted to proceed with appropriate disciplinary action under NRS 678A.520
19 through 678A.600, and has authorized service of this CCB Complaint upon Respondent
20 pursuant to NRS 678A.510(1).

21 FACTUAL ALLEGATIONS

22 9. CCB incorporates all prior Paragraphs as though fully set forth herein.

23 10. Beginning on February 12, 2018, the Department conducted a routine
24 inspection into the Herbal Care marijuana establishment (the "February 2018
25 investigation").

26 11. As part of the February 2018 investigation, the Department conducted visits
27 to the Herbal Care facilities located at [REDACTED] on February 12
28

² This Complaint supersedes the Complaint filed under the Department of Taxation on May 13, 2020.

1 and February 15, 2018.

2 12. The February 2018 investigation revealed a number of violations of NRS
3 453A/453D and NAC 453A /453D.

4 13. These violations were chronicled in a March 22, 2018 Statement of
5 Deficiencies ("SOD") letter which required Herbal Care to submit a Plan of Correction
6 ("POC") within 10 business days.

7 14. On April 2, 2018, Herbal Care submitted a POC to the Department.

8 15. The Department accepted Herbal Care's POC on April 18, 2018.

9 16. In August 2018, the Department noticed an unusual pattern of entries made
10 by Herbal Care into the State's seed-to-sale tracking system, METRC. For example, Herbal
11 Care had logged 77 harvests in METRC, yet had not reported any sales in METRC. In
12 addition, Herbal Care had logged 204,000 grams of waste in METRC, yet had not reported
13 any destruction of product in METRC. Due to the large amount of product unaccounted for
14 in METRC, there was a concern for diversion of product. This prompted the Department
15 to conduct another investigation of the Herbal Care marijuana establishment (the
16 "September 2018 investigation"). The lead investigator for the Department was Damon
17 Hernandez.

18 17. As part of the September 2018 investigation, staff from the Department first
19 visited the Herbal Care facility at [REDACTED] on September 5, 2018.
20 Upon arrival, only one employee of Herbal Care, Melissa Roberson, was present. She had
21 an expired agent card and stated she had not applied for renewal. Ms. Roberson initially
22 told Department staff that she did not have the keys or the codes to open the actual facility
23 and asked that Department return when the cultivation staff would be there. Department
24 staff advised it had the right to access the facility and requested Ms. Roberson contact the
25 managers and/or owners to allow Department access. While one Department staff member
26 worked with Ms. Roberson to contact someone who could open the facility, another
27 Department staff member tried the doors to the facility, which were all found to be locked.
28 However, checking the handles triggered an alarm. When the alarm was triggered, Ms.

1 Roberson immediately opened the doors and disarmed the alarm with the keys and codes
2 she told Department staff she did not have. Department staff was then able to access the
3 facility. Additionally, while speaking with Vince Austin (Herbal Care's consultant, who
4 managed the facility) over the phone, Department staff was told they could not access the
5 facility.

6 18. After accessing the facilities, Department staff found 81 containers of
7 marijuana that were not labeled with METRC tags nor any other tags to identify source,
8 quantity, lot, batch, and/or strain. The Herbal Care staff on site were unable to provide any
9 documentation from METRC for the untagged, unlabeled marijuana. Specifically, the
10 following containers were found without METRC tags (as noted below, some containers had
11 handwritten labels with the name of the strain):

- 12 a. 2 large bags of packaged marijuana flower were found in the facilities
13 office and 2 more found in the in the secure storage room without
14 METRC tags or product labels.
- 15 b. 16 rectangular open trays of Blue Dream strain trim.
- 16 c. 2 round open trays of SSK strain trim.
- 17 d. 3 open trays of BD strain trim.
- 18 e. 2 rectangular open trays of mixed trim.
- 19 f. 4 round open trays of Alien strain trim.
- 20 g. 4 round open trays of Blue Dream strain trim.
- 21 h. 1 round open tray of #9 strain trim.
- 22 i. 3 clear bins of SCH strain trim.
- 23 j. 9 big blue sealed canisters of unknown trim.
- 24 k. 2 white plastic bags of SSK strain trim.
- 25 l. 14 sealed glass jars of Pink Panties strain bud.
- 26 m. 3 vacuum sealed bags of unknown strain bud.
- 27 n. 2 orange burping buckets of Blue Dream strain bud.
- 28 o. 7 white burping buckets of Blue Dream strain bud.

1 p. 1 white burping bucket of Darlins Net strain bud.

2 q. 1 clear bag with individually packaged product of unknown strain bud.

3 r. 1 green bag with individually packaged product of unknown strain bud.

4 s. 2 individually packaged product in leaf bags of unknown strain bud.

5 With respect to the individually packaged products contained within the aforementioned
6 containers, there were 304 separate, individual packages that did not have METRC tags.

7 19. Notably, Herbal Care had been told during the February 2018 investigation
8 that trim could not be mixed, yet Herbal Care continued to have mixed trim in containers
9 when the September 5, 2018, visit took place. Trim lots of different batches and different
10 strains were combined together and improperly labeled as "mixed trim 4/19/2018 harvest."

11 20. During the September 2018 investigation, another Herbal Care employee,
12 Marin Topic, aka "CW", arrived at the facility. Department staff asked Mr. Topic about the
13 77 harvests that had been logged in METRC and where they were located, as no sales had
14 been reported in METRC from December 2017 up through the date of inspection. Mr. Topic
15 was unable to provide an answer, as he relayed that he was only a grower and did not know
16 what was done with the marijuana once it was harvested. Mr. Topic was not able to produce
17 a destruction log or any other destruction documentation Department staff requested for
18 the 204,000 grams of marijuana listed as waste on the METRC harvest reports for 12/1/17
19 through 9/5/18. All the unlabeled containers were quarantined in one room, so Department
20 staff could return to weigh the contents of each.

21 21. The Department investigation team returned to the facility on September 7,
22 2018. Two investigators performed a count of the growing plants, finding a total of 3,282.
23 They found 21 plants with no METRC tags. Other investigators began to weigh the
24 unlabeled product, as set forth in Paragraph 13(a)-(s), above; however, the facility did not
25 have scales appropriate for this task, so that product was quarantined again to be weighed
26 at a later date.

27 22. Other Department staff members on September 7, 2018, worked to verify
28 processes, procedures, and licenses at the facility, as well as an evaluation of the general

1 conditions at the facility. These Department staff members found the following conditions
2 and issues:

- 3 a. The floor of the facility had multiple holes throughout from previous
4 bolt patterns due to relocating shelving.
- 5 b. Missing or damaged base coving and inadequately sealed floor
6 junctures in multiple areas.
- 7 c. Boxes of protective outer garments found on a small shelf in the
8 chemical storage room not elevated to the required minimum of six
9 inches from the floor.
- 10 d. The exit door from the electrical room inadequately sealed on the sides.
- 11 e. Bathrooms discovered without paper towels or toilet paper.
- 12 f. Several plastic containers not food grade material for storage of
13 marijuana product.
- 14 g. Unavailable cleaning schedules for the grow rooms and the drying
15 room.
- 16 h. No Certified Pest Control Applicator on staff for the facility.
- 17 i. The presence of insects in the grow room.
- 18 j. The presence of mold on growing plants.
- 19 k. There was an open ventilation system found in unit 1 which created a
20 potential contaminant exposure risk.
- 21 l. Expired general business license from the City of Reno.

22 23. During the September 7, 2018, visit, one of the owners, Michael Mahoney was
23 also present. Mr. Mahoney was unable to answer any questions about METRC tagging or
24 plant inventory. Department staff also spoke again with Mr. Topic. Mr. Topic again stated
25 that he was responsible for the cultivation of plants and did what he was told as far as
26 when to harvest and what to sell. Mr. Topic stated he followed directions from Vince Austin,
27 who was in charge of operations for the facility.

28 24. Additional findings during the September 5 and 7, 2018, visits showed that

1 the majority of the plants in the grow rooms had METRC tags stuck in the grow media, not
2 zip tied to the plants themselves, as required. Department staff also found that bulk
3 product awaiting testing was stored without labels providing the name of the strain or
4 quantity of the product.

5 25. As a result of these inspections and other aspects of the September 2018
6 investigation, the Department issued a Notice of Summary Suspension against Herbal
7 Care on September 7, 2018.

8 26. Within the Notice of Summary Suspension, the Department provided Herbal
9 Care with notice of a hearing date of September 25, 2018, before an administrative law
10 judge, to provide Herbal Care with an opportunity to be heard and challenge the
11 Department's findings.

12 27. As part of the Department's continued investigation, Department staff
13 returned to the Herbal Care facility on September 11, 2018, to witness the harvesting of
14 two trays of flowering plants.

15 28. As part of the Department's continued investigation, Herbal Care
16 representatives voluntarily met with the Department on September 13, 2018, to discuss
17 the operations of Herbal Care and the facts and circumstances surrounding the September
18 2018 investigation and the summary suspension. Herbal Care was represented by counsel
19 at the meeting. During that meeting, Herbal Care's lead consultant, Vince Austin, stated
20 that Herbal Care's owner, Keith Johnson, had hired Mr. Austin in 2015 to assist with the
21 design and build out of the cultivation facility, without a consulting agreement or contract
22 in place between Mr. Austin and Herbal Care. Mr. Austin stated the initial planting took
23 place in June 2017. Mr. Austin acknowledged that the initial planting started with seeds
24 from his own "personal collection." Mr. Austin admitted he did not have a medical
25 marijuana patient card in Nevada. Mr. Austin did not receive remuneration from Herbal
26 Care for the seeds; he simply planted them and then started to hire and train new staff.
27 Mr. Austin acknowledged that he and the facility staff did not take the Department
28 required METRC training and the facility had staffing issues, including staff smoking

1 marijuana on the premises. During this meeting, Mr. Johnson, acknowledged he had hired
2 Mr. Austin in 2014 or 2015 as a consultant to help him with the build out and design of the
3 cultivation facility in Reno. Mr. Austin could not explain the numerous discrepancies
4 between the facility's manual records and the data they recorded in METRC. Mr. Austin
5 possessed a Nevada agent card for the Herbal Care facility, but it was only valid from
6 October 11, 2017 to August 1, 2019. As such Mr. Austin had worked and/or volunteered at
7 Herbal care without the proper agent card prior to October 11, 2017.

8 29. At the end of the September 13, 2018 meeting, after being advised of the right
9 to a hearing and that the Department bore the burden of proof, Herbal Care waived its
10 right to a hearing regarding the Notice of Summary Suspension and agreed to an indefinite
11 suspension while the Department concluded its investigation.

12 30. Herbal Care waived its right to a hearing regarding the indefinite inspection
13 and agreed to an indefinite suspension in writing on September 17, 2018.

14 31. The Department continued with its investigation after the September 13,
15 2018 meeting.

16 32. On September 14, 2018, Department staff returned to the Herbal Care facility.
17 Plants were counted to verify the accuracy of inventory. Department staff found that plants
18 were crowded into trays. Trays in some cases had standing water at the bottom and winged
19 insects and spider mites. Plants had been previously listed in the facility in METRC at
20 certain locations (there were 4 units/buildings within the Herbal Care facility). However,
21 Department staff found that 380 plants had been moved without entering the changes in
22 METRC. Also, after counting the plants Department staff determined that 63 plants that
23 METRC showed growing in the facility could not be found in the facility. Also, ten harvests
24 from METRC data were selected for review with Herbal Care staff member Kendra
25 Osbourne. Four of the harvests did not show any packaging generated for them and Ms.
26 Osbourne did not know where that product or the information on that product could be
27 located.

28 33. On September 14, 2018, Department staff weighed all of the marijuana found

1 in containers without METRC tags (see Paragraph 13(a)-(s)) at the facility. The total weight
2 was 92.012 kilograms (202.85 pounds).

3 34. Herbal Care made the decision to destroy its remaining inventory of
4 marijuana. On September 20, 2018, Department staff witnessed the destruction of all
5 marijuana inventory on site.

6 35. On September 28, 2018, Department staff returned to Herbal Care to retrieve
7 video footage from surveillance cameras. The parties made arrangements for copies and
8 the Department later obtained and reviewed the footage. The footage was analyzed, in
9 conjunction with the security plan Herbal Care had previously submitted to the
10 Department. Department staff found that Respondent had failed to maintain security
11 cameras which maintain surveillance of necessary areas 24 hours a day /seven days a week,
12 as required. A room showing packaging of marijuana skipped several hours of packaging.
13 An exterior camera only provided stills during nighttime hours.

14 36. Also, during the course of the investigation, Department staff examined
15 Herbal Care's Wholesale Marijuana Tax Return ("WMTR") for the month ending August
16 31, 2018. In Herbal Care's August WMTR, Herbal Care reported no product sold. However,
17 documents Department staff obtained from Herbal Care's facility reveal an invoice and
18 Transportation Manifest for a sale on August 30, 2018, in the amount of \$5,735.04 to
19 Greenleaf Wellness, Inc., that Herbal Care did not report in its August 2018 WMTR.

20 37. During the course of the indefinite suspension, to which Respondent Herbal
21 Care agreed, settlement negotiations took place in an attempt to reach a mutually
22 agreeable resolution to no avail. On February 21, 2020, Respondent filed a Petition for
23 Writ of Mandamus in the Second Judicial District Court in and for Washoe County, Case
24 No. CV20-00343 ("the Petition"), alleging, inter alia, that Herbal Care's agreement to the
25 indefinite suspension was improper and indicating a desire to move forward with the
26 administrative process. On April 20, 2020, Herbal Care filed an Amended Petition for Writ
27 of Mandamus and Complaint³. Accordingly, the Department proceeded with a complaint

28 ³ The Department generally denied the allegations in the Petition and the Amended Petition and Complaint and responded to it via a motion to dismiss on May 13, 2020.

1 and notice of hearing, as settlement negotiations had broken down. As set forth above,
2 CCB now continues with this proceeding via this Complaint.

3 VIOLATIONS OF LAW

4 38. CCB incorporates all prior Paragraphs as though fully set forth herein.

5 39. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17A,
6 Sec. 120(3)(a)(3) (NAC 453D.905(3)(a)(3)) by providing false information to the
7 Department. Specifically, Herbal Care employee Melissa Roberson intentionally provided
8 the Department staff with false information, stating that she did not have the keys or
9 access codes to the facility, when she, in fact, did. This is a Category I violation, which
10 carries a \$35,000 penalty, and a suspension up to 30 days or license revocation.

11 40. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17A,
12 Sec. 120(3)(b)(2) and (5) (NAC 453D.905(3)(b)(2) and (5)) and R092-17, Sec. 91(3)(g) (NAC
13 453D.312(3)(g)) by denying Department staff access to the Herbal Care facility, failing to
14 promptly admit Department staff to the facility, and failing to cooperate fully with an
15 investigation. Specifically, Herbal Care employee Melissa Roberson denied access to the
16 Herbal Care facility to Department. In addition, Herbal Care's consultant/manager told
17 Department that they could not access the facility. These two occurrences are each
18 Category II violations, which delayed access to the facility. The first violation carries a fine
19 of \$10,000 and a license suspension up to 20 days. The second violation carries a fine of
20 \$20,000 and a license suspension up to 30 days. In addition, Ms. Roberson's and Mr.
21 Austin's failure to cooperate fully with Department's investigation is grounds for the
22 suspension or revocation of Herbal Care's licenses, pursuant to R092-17, Sec. 91(3)(g) (NAC
23 453D.312(3)(g)).

24 41. As to licenses C105 and RC105, Respondent Herbal Care violated NRS
25 453A.340(2), R092-17, Sec. 120(3)(a) ((NAC 453D.905(3)(a)), and R092-17, Sec.
26 120(3)(b)(10) (NAC 453D.905(3)(b)(10)) by acquiring usable marijuana (seeds) from an
27 unapproved source. Specifically, Vince Austin, an Herbal Care representative/consultant,
28 admitted that he did not have a medical marijuana patient card in Nevada and he

1 personally brought in marijuana seeds from an unapproved source into the State of Nevada
2 and used those seeds in creating the strains grown by Herbal Care. Herbal Care listed 41
3 strains on the METRC system. As to Herbal Care's license RC105, this is a Category II
4 violation, which is a third Category II violation, requiring revocation of license RC105. As
5 to Herbal Care's C105 license, this is a Category I violation because NRS 453A.340(2) is
6 grounds for immediate revocation. This second Category I violation requires revocation of
7 license C105. Also, pursuant to NRS 453A.340(2) by itself, this offense is grounds for
8 immediate revocation of Respondent Herbal Care's license C105.

9 42. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
10 Sec. 107(2) (NAC 453D.438(2)) and R092-17, Sec. 120(3)(d)(8) (NAC 453D.905(3)(d)(8)) by
11 allowing Vince Austin, a person without a valid marijuana agent registration card, to be
12 employed and/or volunteer, and/or provide labor at Respondent Herbal Care's facility prior
13 to October 11, 2017. Additionally, Department staff observed employee Melissa Robertson
14 working with an agent card expired as of July 31, 2018. There are two such violations.
15 These are Category III violations. The first violation carries a \$2,500 fine and the second
16 violation carries a \$5,000 fine or a license suspension of not more than 10 days.

17 43. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
18 Sec. 120(3)(d)(4) (NAC 453D.905(3)(d)(4)) by failing to keep any required records, including
19 seed-to-sale tracking requirements. Specifically, Respondent failed to use proper METRC
20 tags on 81 containers of marijuana, as set forth in Paragraph 13. Each container holding
21 marijuana which did not have a METRC tag affixed constitutes at least one violation. There
22 are 81 such violations. Each violation is a Category III violation. The first violation is the
23 third Category III violation and carries a \$10,000 fine. The second violation is the fourth
24 Category III violation and license suspension up to 30 days. The remaining 79 violations
25 constitute the fifth and subsequent violations, which require revocation of Herbal Care's
26 licenses.

27 44. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
28 Sec. 120(3)(d)(5) (NAC 453D.905(3)(d)(5)) by failing to properly package and label

1 marijuana. Specifically, individually packaged marijuana product were stored in black
2 trash bags which did not bear METRC tags and could not be traced in METRC to a harvest
3 or a batch which was properly tested. Other packages did not contain the correct testing
4 information making it impossible for a consumer to track the testing results of the
5 marijuana. There are 304 such violations. Each violation is a Category III violation. As
6 there are more than 5 Category III violations pursuant to the above Paragraphs, the
7 additional 304 violations set forth in this Paragraph require license revocation.

8 45. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
9 Sec. 120(3)(d)(5) (NAC 453D.905(3)(d)(5)) by failing to tag all plants as required.
10 Specifically, marijuana plants did not have a visible METRC tags or the METRC tags were
11 not properly attached to the individual plants. This is a Category III violation. Given that
12 there are over 5 Category III violations, the violations in this Paragraph require license
13 revocation.

14 46. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
15 Sec. 120(3)(d)(15) (NAC 453D.905(3)(d)(15)) by failing to meet requirements for the disposal
16 of marijuana waste. Specifically, Respondent failed to adequately document proof of the
17 destruction and proper disposal of marijuana and marijuana products. This is a Category
18 III violation. Given that there are over 5 Category III violations, the violation in this
19 Paragraph requires license revocation.

20 47. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
21 Sec. 120(3)(b)(14) and Sec. 111(1)(a)(3) (NAC 453D.905(3)(b)(14), NAC 453.434(1)(a)(3)) by
22 failing to maintain required surveillance systems. Specifically, Respondent failed to
23 maintain security cameras which maintain surveillance of necessary areas 24 hours a
24 day/seven days a week. A room showing packaging of marijuana skipped several hours of
25 packaging. An exterior camera only provided stills during nighttime hours. Either situation
26 could result in diversion and violated the security plan Herbal Care submitted to the
27 Department when it applied for its License/Certificate. This is a Category II violation. As
28 there are over 2 Category II violations, the violation in this Paragraph requires license

1 revocation.

2 48. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
3 Sec. 120(3)(d)(3) (NAC 453D.905(3)(d)(3)) by allowing consumption by any person of
4 marijuana on the premises of the marijuana establishment. Specifically, during the
5 September 13, 2018 meeting Herbal Care representatives admitted employees consumed
6 marijuana on the premises as an explanation for certain procedures not being followed by
7 Herbal Care employees. There are two violations. Each violation is a Category III violation.
8 Given that there are over 5 Category III violations, the violations in this Paragraph require
9 license revocation.

10 49. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17
11 Sec. 120(3)(e)(12) (NAC 453D.905(3)(e)(12)) by allowing infestation by pests that are not
12 multigenerational or on contact surfaces, specifically, spider mites, winged insects, and
13 mold as shown in several photographs. There is one violation, which is a Category IV
14 violation, carrying a \$1,250 fine.

15 50. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
16 Sec.120(3)(a)(3) (NAC 453D.905(3)(a)(3)) and/or R092-17, Sec.120(3)(b)(1) (NAC
17 453D.905(3)(b)(1)) by entering false information in METRC. Specifically, Herbal Care's
18 METRC entries showing the weight of plants harvested were inconsistent with internal
19 Herbal Care records. The person responsible for inventory control at the facility could not
20 identify the current status or location of the marijuana from four of the ten harvests
21 documented in METRC selected for review. There are 507 such violations. For intentionally
22 entering false information, this is a Category I violation, requiring revocation of licenses.
23 For unintentionally entering false information, this is a Category II violation, also
24 requiring revocation of licenses.

25 51. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
26 Sec. 183(1)(c), (2)(c), (2)(d), and (e)(10) (NAC 453D.732(1)(c), (2)(c), (2)(d), and (e)(10)), and
27 Sec. 188 (NAC 453D.734) by failing to properly maintain a building used for marijuana
28 manufacture, processing, and/or holding. Specifically, the September 2018 investigation

1 found floors with multiple holes throughout the facility, base coving missing or damaged,
2 inadequately sealed floor junctures in multiple areas, boxes of protective outer garments
3 found on a small shelf in the chemical storage room not elevated to the required minimum
4 of six inches from the floor, and an inadequately sealed exit door from the electrical room.
5 There are 8 such violations, which are Category V violations. The first violation does not
6 carry a fine. The second violation carries a \$750 fine. The third violation carries a \$1,250
7 fine or up to a 3 day license suspension. The fourth violation carries a \$2,500 fine or up to
8 a 7 day license suspension. The fifth violation carries a \$5,000 fine or license suspension
9 up to 10 days. The sixth and subsequent violations each carry \$10,000 fines or up to 20
10 days of license suspension.

11 52. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
12 Sec. 113(1)(a)(2) and (5) (NAC 453D.446(1)(a)(2) and (5)) by failing to maintain the facility
13 restroom. Specifically, inspection found that the bathrooms were not supplied with paper
14 towels or toilet paper. There are 2 Category V violations, each carrying a \$10,000 fine or a
15 license suspension up to 20 days.

16 53. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
17 Sec. 219(5) (NAC 453.805(5), NAC 453D.905(3)(e)(9)) by using several plastic containers
18 for storage of marijuana product that not food grade materials, as observed during the
19 September 7, 2018 inspection. This is a Category IV violation, carrying a \$2,500 fine or
20 suspension up to 7 days (second Category IV violation).

21 54. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
22 Sec. 187(1)(a) (NAC 453D.720(2)(c)(2), NAC 453D.740(1)(a), and NAC 453D.905(3)(e)(10))
23 by failing to have on hand cleaning schedules for the grow rooms and drying room, as
24 observed during the September 7, 2018 inspection. This is a Category IV violation, carrying
25 a \$5,000 fine or license suspension of up to 10 days (third Category IV violation).

26 55. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
27 Sec. 187(4) (NAC 453D.740(4)) by failing to have an employee who is a certified pest control
28 applicator on staff. This is a Category V violation, carrying a \$10,000 fine.

1 The CCB may order one or any combination of the discipline described above.

2 **RELIEF REQUESTED**

3 Based on the foregoing, counsel for the CCB respectfully requests the CCB impose
4 the penalty of revocation against Herbal Care's licenses, C105 and RC 105. In addition
5 counsel for the CCB respectfully requests the CCB impose penalties against Herbal Care
6 in the amount of \$160,750. Counsel for the CCB further requests the amount expended for
7 its time and effort, pursuant to R092, Sec. 102(3) (NAC 453A.352(4) and 453.200(3)), in the
8 amount of \$45,163.16. In sum, counsel for the CCB respectfully requests the CCB order
9 revocation of Herbal Care's licenses and fines, penalties and costs in the total amount of
10 \$205,913.16. The CCB reserves its right to seek additional amounts for time and effort as
11 its work on this matter continues through hearing and rehearing, if applicable.

12 **NOTICE TO RESPONDENT**

13 **PLEASE TAKE NOTICE**, that Respondent has a right to request a hearing on the
14 charges set forth herein, pursuant to NRS 678A.510 through 678A.590. **Failure to**
15 **demand a hearing constitutes a waiver of the right to a hearing and to judicial**
16 **review of any decision or order of the Board, but the Board may order a hearing**
17 **even if the respondent so waives his or her right. NRS 678A.520(2)(e).**

18 **PLEASE TAKE NOTICE**, that Respondent must answer this Complaint
19 **within 20 days after service of this Complaint, unless granted an extension. Pursuant**
20 **to NRS 678A.520(2), in the answer Respondent:**

- 21 (a) Must state in short and plain terms the defenses to each claim asserted.
22 (b) Must admit or deny the facts alleged in the complaint.
23 (c) Must state which allegations the respondent is without knowledge or information
24 form a belief as to their truth. Such allegations shall be deemed denied.
25 (d) Must affirmatively set forth any matter which constitutes an avoidance or
26 affirmative defense.
27 (e) May demand a hearing.
28

1 **Failure to demand a hearing constitutes a waiver of the right to a hearing**
2 **and to judicial review of any decision or order of the Board, but the Board may**
3 **order a hearing even if the respondent so waives his or her right.**

4 **Failure to answer or to appear at the hearing constitutes an admission by**
5 **the respondent of all facts alleged in the Complaint. The Board may take action**
6 **based on such an admission and on other evidence without further notice to the**
7 **respondent. NRS 678A.520(3).**

8 The Board shall determine the time and place of the hearing as soon as is reasonably
9 practical after receiving the respondent's answer. The Board shall deliver or send by
10 registered or certified mail a notice of hearing to all parties at least 10 days before the
11 hearing. The hearing must be held within 45 days after receiving the respondent's answer
12 unless an expedited hearing is determined to be appropriate by the Board, in which event
13 the hearing must be held as soon as practicable. NRS 678A.520(4).

14 Respondent's Answer and Request for Hearing must be either: mailed via registered
15 mail, return receipt; or delivered in person; or emailed to:

16 Tyler Klimas, Executive Director
17 Cannabis Compliance Board
18 555 E. Washington Avenue, Suite 4100
19 Las Vegas, Nevada 89101
20 tklimas@ccb.nv.gov

21 If served by email, Respondent must ensure that it receives an acknowledgement of receipt
22 email from CCB as proof of service.

23 As RESPONDENT, you are specifically informed that you have the right to appear
24 and be heard in your defense, either personally or through your counsel of choice at your
25 own expense. At the hearing, the CCB has the burden of proving the allegations in the
26 Complaint, although any failure on your part to maintain any documents, records,
27 surveillance video, and/or any other items required pursuant to the relevant statutes and
28 regulations shall create a rebuttal presumption that such items would be harmful to your
case. The CCB will call witnesses and present evidence against you. You have the right to
respond and to present relevant evidence and argument on all issues involved. You have

1 the right to call and examine witnesses, introduce exhibits, and cross-examine opposing
2 witnesses on any matter relevant to the issues involved.

3 You have the right to request that the CCB issue subpoenas to compel witnesses to
4 testify and/or evidence to be offered on your behalf. In making this request, you may be
5 required to demonstrate the relevance of the witness's testimony and/or evidence.

6 If Respondent does not wish to dispute the charges and allegations set forth herein,
7 within 30 days of the service of this Complaint, Respondent may pay the civil penalties and
8 costs set forth above in the total amount of \$64,186.50 and surrender licenses RC132 and
9 C132 to:

10 Tyler Klimas, Executive Director
11 Cannabis Compliance Board
12 555 E. Washington Avenue, Suite 4100
13 Las Vegas, Nevada 89101

14 YOU ARE HEREBY ORDERED to immediately cease the activity described above
15 which is a violation of Nevada law.

16 DATED: July 21, 2020.

17 STATE OF NEVADA,

18 By: 

19 Tyler Klimas, Executive Director
20 555 E. Washington Avenue, Suite 4100
21 Las Vegas, Nevada 89101
22 (702) 486-2300

23 AARON D. FORD
24 Attorney General

25 By: 

26 L. Kristopher Rath (Bar No. 5749)
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